

### **REMARKS/ARGUMENTS**

In the Office Action dated November 22, 2004 the Examiner has rejected subject matter of Claims 1-3 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,392,125 to Dudash. The Examiner has also rejected the subject matter of Claims 4-8 under 35 U.S.C. as being unpatentable over the following references: U.S. Patent No. 1,392,125 to Dudash; U.S. Patent No. 5,915,806 to Levee; U.S. Patent No. 5,937,531 to Menk et al.; and U.S. Patent No. 1,262,678 to Lapoint. The references and the Examiner's rejection of the various claims are discussed in detail below.

The Examiner has objected to the drawings under 37 C.F.R. 1.83(a). The Examiner has requested that the "spring device" as defined in Claim 4 and the "ring" in Claim 8 must be shown in the figures.

In response to the objection to the drawings, Applicant has undertaken to submit new Figure 5. The new Figure 5 shows that the "ring" is attached to a free end of the bar (1). The specification has been amended to reference Figure 5 and the ring (12). Support for the amendment can be found in the application on page 3, lines 3-7. The new Figure has been added as Attachment A. Applicant avers that no new matter has been added and requests withdrawal of the rejection.

The Examiner has objected to the specification regarding the language "at least one screw (8) with adjustment ring nut." Applicant has amended the specification and the claims to state that the at least one screw (8) with the adjustment ring nut can be called a "thumbscrew." No new matter has been added.

Claims 1 and 8 have been amended to more specifically define the present invention. Claim 1 has been amended to include the subject matter of Claim 2. Claim 8 has been amended to include the subject matter of Claim 4 and to state that the ring is attached between the upper plane and the lower part of the bar to prevent the one or more cursors from being removed from the bar during use. The term "spring device" refers to the ring as being spring loaded and being resiliently and removably attached to a free end of the bar. Accordingly, Claims 2 and 4 have been cancelled. No new matter has been added.

New Claims 9-11 have been added. Claim 9 defines the bar as having a sidewall extending substantially perpendicular from the upper plane of the bar to the lower part of the bar. Claim 10 defines the cursor as having a top wall positioned substantially parallel to the upper plane of the bar and a cursor sidewall extending downwardly from the cursor top wall. The screw extends through the side wall of the cursor to contact the side wall of the bar. Claim 11 further defines that the ring is removably attached to a free end of the bar as shown in new Figure 5. Support for Claims 9 and 10 can be found in original Figures 1-4. Support for Claim 11 can be found in the specification on page 3, lines 3-7 and in Figure 5. No new matter has been added.

Claims 1, 3 and 5-11 remain in the present application for continued prosecution.

Claims 1-3 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,392,125 to Dudash. The Examiner contends that the Dudash '125 reference includes all the claimed features of the present invention. Applicant traverses the rejection based on the following analysis.

The Dudash '135 reference does not teach or suggest a lower part and one or more feet integrally formed with an abutment for measuring aligned with zero on the graduated plane as defined in Claim 1, as amended. The Dudash reference '135 teaches that a finger (7) extends from the frame (1) and is not integrally formed with the frame. The Dudash reference '135 does not teach or suggest an abutment for measuring is aligned with zero on the graduated plane as defined in Claim 1, as amended.

Accordingly, Claims 1-3 and those claims dependent therefrom patentably distinguish over the prior art.

Claims 5 and 6 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Dudash '135 reference. The Examiner contends that it would have been obvious to one having ordinary skill in the art to use aluminum to make the device. Applicant traverses the rejections based on the following analysis.

The Dudash '125 reference does not teach or suggest using aluminum to integrally form a lower part with feet as defined in the claims of the present application. Further, for

the reasons set forth earlier, the Dudash '125 reference does not teach or suggest all of the elements of the invention as defined in the Claims of 5 and 6.

Accordingly, Claims 5 and 6 patentably distinguish over the prior art.

Claim 7 has been rejected under 35 U.S.C. 103(a) as being unpatentable over the Dudash '125 reference in view of U.S. Patent No. 5,937,531 to Menk et al. The Examiner concedes that the Dudash '125 reference is silent on a lower part being provided with a reinforcement core with a rhomboidal structure made of aluminum alloy. The Examiner contends that the Menk et al. '531 reference teaches an I-beam shape employing a truss as a reinforcing core. The Examiner contends that it would have been obvious to one having ordinary skill in the art to modify the bar as taught by the Dudash '125 reference to include a larger cross section and reinforcement core as taught by the Menk et al. '531 reference. Applicant traverses the rejection based on the following analysis.

The Menk et al. '531 reference teaches that an I-beam leveling tool 300 shown in Fig. 9 has truss supports 330 provided between a first rail 324 and the upper flange 322. The truss supports 330 are also provided between the second rail 330 and the upper flange 322. The truss supports 330 are provided on the side of the elongated body 302. The Menk et al. '531 does not teach or suggest that the trusses are provided on the lower part of the bar as defined in Claim 7. Further, the Menk et al. '531 reference does not teach or suggest that a rhomboidal structure is used to form the truss support.

Accordingly, Claim 7 patentably distinguishes over the prior art.

Claim 8 has been rejected under 35 U.S.C. 103(a) as being patentable over the Dudash '125 reference in view of U.S. Patent No. 1,262,678 to Lapoint. The Examiner concedes that the Dudash '125 reference does not teach a ring. Accordingly, the Examiner contends that it would have been obvious to one having ordinary skill in the art to combine a ring as taught in the Lapoint '678 reference with the device of the Dudash '125 reference. Applicant traverses the rejection based on the following analysis.

The Lapoint '678 reference does not teach or suggest a ring removably attached to the bar as defined in Claim 8, as amended. The Lapoint '678 reference only teaches a handle portion 9 attached to a strip 7. The handle portion 9 of the Lapoint '678 reference is not a

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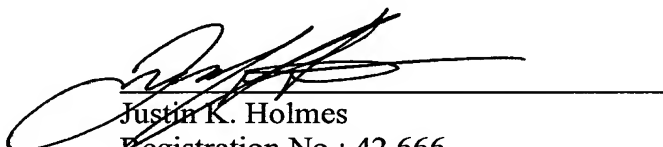
ring that is removably attached to the bar to prevent removal of the cursor as defined in Claim 8 of the present application.

Accordingly, Claim 8 patentably distinguishes over the prior art.

Applicant has enclosed the required Request for a One (1) Month Extension of Time as well as the appropriate fee. No additional fees are necessary. If however, they are deemed necessary, please charge the Deposit Account No. 08-2461.

In view, therefore, of the amendment to the drawings, specification, claims, as well as the remarks set forth above, Applicant firmly believes the present application is in all respects in condition for allowance which action is earnestly solicited. If the Examiner believes that a telephone interview would assist in moving the application toward allowance, she is respectfully invited to contact the Applicants' attorney at the telephone number listed below.

Respectfully submitted,



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## **ATTACHMENT A**